

March 11, 2011

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC-Docket 02-6

Dear Ms. Dortch:

Upon reviewing the Commission's recent orders on the application of the Federal Gift Rules to the E-Rate program¹ and the most recent guidance from the U.S. Office of Government Ethics on Widely Attended Gatherings², the schools and libraries community continues to have significant questions regarding the parameters of the Federal Gift Rules. The Education & Library Networks Coalition (EdLiNC), which represents most of the major K-12 public and private education associations as well as the American Library Association, files this *ex parte* in an effort to gain clarity in four key areas:

1. Who in the E-Rate applicant community the Commission deems covered by the Federal Gift Rules;
2. How the Commission defines widely attended gatherings under the Federal Gift Rules, particularly in connection with non-profit association conferences and related sub-events;
3. Which E-Rate vendor sponsorships of non-profit associations and their conferences are permissible under the Federal Gift Rules; and
4. How E-Rate providers may participate in raffles, auctions and similar activities related to non-profit association conferences.

The inability of the E-Rate community to answer the above enumerated questions has caused a great deal of uncertainty, causing some E-Rate vendors to suspend sponsorships of non-profit organization events and activities and some E-Rate applicants to reconsider attending non-profit professional conferences. We request that the Commission consider issuing clarifications in these four areas that will result in bright line rules for E-Rate vendors and applicants.

¹ *Schools and Libraries Universal Service Support System and A National Broadband Plan for Our Future*, Sixth Report and Order, CC Docket 02-6, FCC 10-175 at paras. 87-90 (rel. Sept. 28, 2010); and *Schools and Libraries Universal Service Support System and A National Broadband Plan for Our Future*, Order, Cc Docket 02-6, DA 10-2355 at paras. 8-14 (rel. Dec. 15, 2010).

² Advisory Opinion Regarding Widely Attended Gatherings, 07x14 (Dec. 5, 2007), available at http://www.usoge.gov/ethics_guidance/opinions/advop_files/2007/07x14.html.

Towards that end, EdLiNC proposes for the Commission's consideration the following clarifications:

1. Coverage:

The December 15 Order suggests, but does not explicitly state, that all E-Rate applicant employees involved with any part of the E-Rate application process, including developing the required technology plans, are subject to the Federal Gift Rules. EdLiNC believes that such coverage is overbroad, unnecessarily sweeping in E-Rate applicant employees with only tangential connections to the application process and no real involvement with the procurement process or final procurement decisions. Therefore, we request that the Commission more narrowly define Federal Gift Rule coverage to encompass only those employees of E-Rate recipients with direct involvement in final procurement decisions. We believe that E-Rate applicant employees with only a tangential connection to the E-Rate process, including those tasked with the development of recipient technology plans, should not be covered by the Federal Gift Rules.

2. Widely Attended Gatherings:

While the federal government has a great deal of experience in applying the "widely attended gathering" exception to the Federal Gift Rules, E-Rate applicants and vendors, for the most part, do not have longstanding experience with navigating this exception nor do many have access to the advice of legal counsel. To assist educators and librarians with understanding this exception in the context of the many non-profit, professional association conferences and events to which they are invited (and which are useful for skill building and professional exchanges of information), we request that the Commission define "widely attended gatherings" as encompassing all gatherings held by non-profit, professional associations, where attendees participate either for free or by paying an admission fee, and where a central purpose of the gathering is professional development and the interchange of ideas. Since a number of these larger conferences include smaller sub-events (e.g., symposia, site visits, luncheons), we request further that the Commission make clear that smaller events held directly in conjunction with non-profit, professional association gatherings, including special speaking sessions, site visits, luncheons and symposia, fall within the definition of widely attended gatherings.

3. Sponsorships:

Many E-Rate vendors are general sponsors of non-profit, professional associations (as well as those organizations' conferences), the members of which oftentimes include school or library employees involved with the E-Rate application process. Since such generalized sponsorships are unlikely to influence the E-Rate procurement process as any benefits of vendor sponsorships would be secondary and filtered through non-profit associations, we request that the Commission clarify that: general sponsorships, whether paid or in-kind, by E-Rate providers of non-profit, professional associations of which covered E-Rate

applicants are members, and/or non-profit professional association conferences attended by covered E-Rate recipients, are permissible under the Federal Gift Rules so long as E-Rate providers are not identified with particular food, drink, gift or travel related items or costs.

4. Raffles:

Many non-profit, professional associations rely on raffles, auctions and other similar activities to raise operational funds. While we understand the need to avoid situations where covered employees of E-Rate applicants receive direct, tangible benefits from E-Rate vendors through such activities, we believe that the possibility of influencing the competitive bidding process is eliminated when E-Rate providers donate auction or raffle prizes to non-profit associations that, in turn, are responsible for operating the raffle or auction and disseminating the prizes. Therefore, we request that the Commission clarify that: E-Rate vendors may sponsor and provide prizes for an auction or raffle occurring held by a non-profit, professional association conference in which covered E-Rate employees participate so long as the E-Rate vendors have no control over the awarding of the auction or raffle prizes.

We appreciate the Commission's attention to our recommendations.

Sincerely,

Education & Libraries Networks Coalition